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*La mer territoriale au point de vue théorique et pratique.*

Par JOSEPH IMBART LATOUR, docteur en droit, avocat à la Cour d'Appel de Paris. Paris, A. Durand et Pedone-Lauriel, 1889. — 380 pp.

There is a widespread impression that when we have stated that the jurisdiction of a nation over waters adjacent to its coasts extends to a distance of three marine miles from the shore, and, in the case of waters *inter fauces terrae*, to the same distance from a line drawn from headland to headland, we have laid down an absolute rule which is firmly embedded in the principles of international law. This impression has been confirmed in the United States by the discussions of the Canadian fisheries question, in which the conventional phrase "three marine miles from the coasts, creeks, bays and harbors" has become familiar language. But, in reality, there is no rule open to greater exception and more likely to be the subject of modification in the future than that by which it is sought to confine the exercise of jurisdictional acts to a marine belt of three miles. Perels, in his great work on the admiralty, justifies the doctrine of the territoriality of adjacent waters on the three following grounds: (1) The security of a maritime state requires the possession of its marginal waters; (2) The surveillance of ships which enter those waters, whether passing through or stopping there, is demanded in order to guarantee the efficient police and the development of the political, commercial and financial interests of the bordering state; (3) The enjoyment of the possession of territorial waters serves to sustain the existence of the population on the coast. The mere statement of these grounds is sufficient to show that the distance to which a state may exercise jurisdictional acts over its marginal waters cannot be limited by an absolute rule of so narrow proportions as that of the three-mile belt.

Among the recent works in which this interesting matter has been discussed, the most comprehensive and instructive is that which forms the subject of the present review. This work, which is of value from a practical as well as from a theoretical point of view, was awarded the Bordin prize in 1888 by the French Academy of Moral and Political Science. It is divided into three parts. In the first part, the author discusses the right of the state over the territorial seas, its justification and philosophical origin, and its extent. In this relation, he treats of the subject of ports, harbors and roads, gulfs and bays, interior seas and those which communicate by a narrow outlet with the ocean. In the second part, he reviews each of the rights which are recognized as belonging to a state in its territorial waters, such as the right of fishery, of the coasting trade, of police jurisdiction, and of the regulation of ceremonial observances. In the third and last part, he discusses the

peculiar conditions created by a state of war ; treating in this relation the subjects of neutrality, blockade and the law of prize. He defines the territorial sea as the sea adjacent to the coasts, over which the bordering nation may from the shore employ its armed force, and thus exercise the power which is necessary to defend its territory and coasts, assure the safety of its inhabitants and guard its fiscal and commercial interests. In following out his discussion, however, the author observes a distinction (which seems necessary and proper) between the exercise by a nation of its protective power and the claim of exclusive possession. Thus it may be held that a nation is entitled in self-defence to forbid the commission of dangerous and destructive acts within such extent of sea as may be necessary for the protection of its coasts from injury. The reason originally given for the three-mile rule was that it measured the range of cannon-shot, and thus afforded an ample guaranty both for security and for protection. It is obvious that the rule is insufficient for that purpose to-day. In 1864, when the *Kearsarge* appeared off Cherbourg, France, in the pursuit of the *Alabama*, which was then lying in that harbor, the French minister of Foreign Affairs, when it became apparent that an engagement between the vessels would take place, informed Mr. Dayton, the minister of the United States, that a fight on or about the distance of three miles from the coast, in which case the coast would be within the destructive range of the guns, would be offensive to the dignity of France and could not be permitted.

Special rules are sometimes claimed for the protection of the revenues. Thus the Revised Statutes of the United States (section 2760) authorize the officers of revenue cutters to "go on board all vessels which arrive within the United States or within four leagues of the coast thereof, if bound for the United States" ; to examine their papers and manifests ; and to "remain on board of such vessels until they arrive at the port or place of their destination."

On the other hand, no general disposition has been manifested in recent years to restrict the right of all nations to take fish in the open sea. The three-mile rule, which defines the exclusive right of fishery on the Canadian coasts under the treaty between the United States and Great Britain of 1818, is found embodied in a convention made in 1882 between Great Britain, Germany, France, Belgium, Denmark and the Netherlands for the regulation of the fisheries in the North Sea. The same rule was adopted in conventions between France and Great Britain in 1839 and 1843 for the regulation of the fisheries in the Channel. It is also found in a law passed by the French legislature in 1885 for the exclusion of foreigners from fishing in the territorial waters of France and Algiers.

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